

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 17.8.601, 17.8.604,)
17.8.605, 17.8.606, 17.8.610,)
17.8.612 and 17.8.614) (AIR QUALITY)
pertaining to open burning)

TO: All Concerned Persons

1. On August 15, 2002, the Board of Environmental Review published a notice of public hearing on the proposed amendment of the above-stated rules at page 2118, 2002 Montana Administrative Register, issue number 15.

2. The Board has amended ARM 17.8.604, 17.8.606, 17.8.610, 17.8.612 and 17.8.614 exactly as proposed. The Board has amended ARM 17.8.601 and 17.8.605 as proposed, but with the following changes:

17.8.601 DEFINITIONS (1) through (1)(a)(x) remain as proposed.

(b) For essential agricultural open burning, prescribed wildland open burning, conditional air quality open burning, commercial film production open burning, Christmas tree waste open burning, or ~~any other~~ minor open burning during September, October, or November, BACT includes burning only during the time periods specified by the department, which may be determined by calling the department at (800) 225-6779.

(c) For essential agricultural open burning, prescribed wildland open burning, conditional air quality open burning, commercial film production open burning, Christmas tree waste open burning, or ~~any other~~ minor open burning during December, January, or February, BACT includes burning only during the time periods specified by the department, which may be determined by calling the department at (800) 225-6779.

(2) through (6) remain as proposed.

(7) "Open burning" means combustion of any material directly in the open air without a receptacle, or in a receptacle other than a furnace, multiple chambered incinerator, or wood waste burner, with the exception of ~~combustion of~~ detonation of unexploded ordnance, small recreational fires, construction site heating devices used to warm workers, or safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants or elemental phosphorus plants.

(8) through (11) remain as proposed.

17.8.605 SPECIAL BURNING PERIODS (1) through (1)(g) remain as proposed.

(h) any minor open burning that is not prohibited by ARM 17.8.604 or that is allowed by ARM 17.8.606.

(2) remains as proposed.

3. The following comments were received from the U.S. Environmental Protection Agency and appear with the Board's responses:

COMMENT NO. 1: The revisions to the Open Burning Rule would allow more open burning to occur throughout the entire year and would no longer restrict the categories of minor source that could burn from September through February. We believe this is a relaxation of the existing open burning rules in the Federally approved State Implementation Plan (SIP). We do not believe we can approve the provisions that allow more open burning unless the State submits an analysis showing that the relaxation will not interfere with attainment and reasonable further progress, or any other applicable requirement of the Clean Air Act (Act). See section 110(1) of the Act.

RESPONSE: The board believes that allowing open burning to take place during periods when it is currently prohibited does not increase the total amount of burning that takes place. The burning that is going to take place is merely spread throughout the entire year. This reduces emissions during the fall and spring. Allowing minor open burning to occur under favorable conditions during the winter months will not endanger ambient air quality standards since the burning would be allowed only at times and in places where the ventilation is sufficient to protect ambient standards.

COMMENT NO. 2: In ARM 17.8.605(h) the rule is being revised to allow minor open burning during the entire year. However, ARM 17.8.606 places some restrictions on minor open burning from September through February. If the State can make the demonstration mentioned in Comment No.1, we believe ARM 17.8.605(h) should be revised to read as follows: "any minor open burning that is not prohibited by ARM 17.8.604 nor restricted by ARM 17.8.606." To the extent that any of the other categories of sources listed in ARM 17.8.605 are also restricted by ARM 17.8.606, ARM 17.8.605 should be revised to indicate that burning throughout the entire year may be limited by ARM 17.8.606.

RESPONSE: ARM 17.8.605(1)(a) through ARM 17.8.605(1)(h) simply state the types of burning that are allowed to be conducted during the entire year. ARM 17.8.606 contains the requirements that a minor open burning source must adhere to prior to burning during the general open burning season (March through August), the ventilation hotline period (September through November), and the winter season (December through February).

The board believes that the language EPA suggested for ARM 17.8.605(1)(h) points out the obvious, that allowing minor open burning to potentially take place during the entire year does not exempt minor open burning sources from complying with

the requirements contained in ARM 17.8.606. However, the board has amended ARM 17.8.605(1)(h) to read as shown above.

COMMENT NO. 3: ARM 17.8.605 is being revised to allow more source categories to burn during the entire year. If the State can make the demonstration mentioned in Comment No.1, we believe the definition of BACT, ARM 17.8.601(1)(b) and (c), should also be revised to include all the source categories allowed to burn the entire year. Therefore, BACT would require the source categories allowed to burn the entire year to burn only during the timeframes specified by the Department.

Likewise, the definition of BACT, at 17.8.601(1)(b) and (c), is being revised to incorporate some additional source categories that need to contact the Department before open burning. In addition to the comment mentioned immediately above, we believe the proposed changes to ARM 17.8.601(1)(b) and (c) should be revised. Specifically, we believe "any other minor open burning," being added to ARM 17.8.601(1)(b) and (c), should be revised to just "minor open burning." We believe including "any other minor open burning" implies that ARM 17.8.601(1)(b) and (c) only apply to minor sources. We do not believe ARM 17.8.601(1)(b) and (c) apply just to minor sources; we believe ARM 17.8.601(1)(b) and (c) are included to address those source categories that are allowed to burn the entire year. We believe adding "any other" with "minor open burning" relaxes the existing Federally-approved SIP definition of BACT. See Comment No.1 regarding SIP relaxations.

RESPONSE: The board has amended ARM 17.8.601(1)(b) and (c) as shown above.

However, the board does not believe that emergency open burning should be included in ARM 17.8.601(1)(b) or (c). Emergency open burning is exempt from BACT, because, to be considered emergency open burning, the substance to be burned must pose an immediate threat to public health and safety or to plant or animal life. The board also does not believe that open burning to train firefighters should be included in ARM 17.8.601(1)(b) or (c). Open burning to train firefighters is exempt from BACT because of the importance that is placed on firefighter training to enable fire departments to properly protect and/or rescue the public in an emergency situation.

COMMENT NO. 4: The definition of "open burning," ARM 17.8.601(7), is being revised to exclude from the open burning rule requirements the "combustion of ordnance." We are concerned that the open burning regulations do not define "ordnance" nor put any limitations on the size or type of ordnance that is excluded from the open burning requirements. Webster's Ninth New Collegiate Dictionary, 1986, defines ordnance as "military supplies including weapons, ammunition, combat vehicles, and maintenance tools and equipment." We believe excluding the combustion of ordnance from the open burning regulations is a SIP relaxation. See Comment No.1.

Additionally, excluding the combustion of ordnance from the open burning regulations may imply that it is okay to open burn ordnance. However, when ordnance is discarded it may be subject to hazardous waste permitting requirements.

RESPONSE: The board has amended ARM 17.8.601(7) as shown above.

The board believes that changing the term "combustion of ordnance" to "detonation of unexploded ordnance" addresses EPA's concerns regarding ARM 17.8.601(7) and that further definitions or limitations are not required. In addition, the board believes that the detonation of unexploded ordnance was never considered open burning, because unexploded ordnance may pose an imminent threat to public safety and health. The intent of the proposed amendment to ARM 17.8.601(7) is to clarify that the detonation of unexploded ordnance is not considered open burning.

COMMENT NO. 5: Finally, the revised language added to ARM 17.8.604(1)(a), i.e., "or unless approval is granted by the department on a case-by-case basis," is a department discretion provision. A department discretion provision allows the Department to revise the SIP without completing a formal SIP revision. We do not believe we can approve department discretion provisions because they are inconsistent with section 110(i) of the Act.

RESPONSE: The board does not believe that department approval, on a case-by-case basis of open burning of waste that has been moved from the premises where it was generated, would constitute a SIP revision. Other provisions of the SIP allow the department to make case-by-case determinations. Further, moving waste from the premises where it was generated prior to open burning may be appropriate, on a particular case, to minimize air quality impacts.

BOARD OF ENVIRONMENTAL REVIEW

By: _____
JOSEPH W. RUSSELL, M.P.H.
Chairman

Reviewed by:

DAVID RUSOFF, Rule Reviewer

Certified to the Secretary of State, _____, 2002.